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Election of judges of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Memorandum by the Secretary-General

Introduction

1. By its resolution 827 (1993) of 25 May 1993, the Security Council decided to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991 ("International Tribunal") and adopt the Statute of the International Tribunal annexed to the Secretary-General's report prepared pursuant to Security Council resolution 808 (1993) of 22 February 1993.

2. By its resolution 1166 (1998) of 13 May 1998, the Security Council decided to establish a third Trial Chamber of the International Tribunal and, to that end, to amend articles 11, 12 and 13 of the Tribunal's Statute and replace those articles with the provisions which are set out in the annex to that resolution. It also decided that three additional judges should be elected as soon as possible to serve in the additional Trial Chamber and that the judges so elected should serve until the date of expiry of the terms of office of the judges currently serving on the Tribunal (16 November 2001).

3. Pursuant to article 13, subparagraph 2 (a), of the Statute of the International Tribunal, the Legal Counsel, on behalf of the Secretary-General, invited, by circular letter of 4 June 1998, all States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters to submit their nominations for judges of the third Trial Chamber of the International Tribunal. In accordance with article 13, subparagraph 2 (b), of the Statute, each State was invited to nominate, within 60 days of the date of the invitation, up to two candidates, no two of whom were to be of the same nationality. The Legal Counsel also referred to article 12 of the Statute of the International Tribunal, in accordance with which no two judges of the Tribunal might be nationals of the same State, and advised States that consequently they might not nominate candidates bearing the same nationality as any of the judges who are currently serving on the Tribunal.

4. The 13 nominations received within the period stipulated in subparagraph 2 (b) of article 13 of the Statute of the International Tribunal were forwarded by the Secretary-General to the President of the Security Council in accordance with article 13, subparagraph 2 (c), of the Statute by means of a letter dated 7 August 1998. At its 3919th meeting, on 27 August 1998, the Security Council, in accordance with subparagraph 2 (c) of article 13 of the Statute, as applied to the current election by paragraph 2 of Security Council resolution 1166 (1998), established a list

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of nine candidates for transmittal to the General Assembly. The list was adopted by the Council in its resolution 1191 (1998) of 27 August 1998 and was formally conveyed to the President of the General Assembly by letter dated 27 August 1998 from the President of the Security Council (A/52/1023).

5. The list of candidates for judges and the procedure for the election of the judges of the International Tribunal are set out below. The curricula vitae of the candidates will be transmitted to the General Assembly in a separate document (A/53/352).

I. List of candidates for judges of the third Trial Chamber of the International Tribunal

6. The list of candidates for judges of the third Trial Chamber of the International Tribunal is as follows:

Mr. Mohamed Bennouna (Morocco)
Mr. David Hunt (Australia)
Mr. Per-Johan Lindholm (Finland)
Mr. Hugo Anibal Llanos Mansilla (Chile)
Mr. Patrick Robinson (Jamaica)
Mr. Jan Skupinski (Poland)
Mr. Luis Valencia-Rodriguez (Ecuador)
Mr. S. W. B. Wadugodapitiya (Sri Lanka)
Mr. Peter H. Wilkitzki (Germany)

II. Procedure for the election of judges

7. The election of judges will take place in accordance with the following provisions:

(a) Article 13 of the Statute of the International Tribunal;

(b) Given the similar nature of the election of judges of the International Court of Justice and the election of judges of the International Tribunal, it was decided at the time of the previous elections of judges in 1993 and 1997 to follow similar election procedures in the General Assembly. The Secretary-General suggests that these precedents be followed and that rule 151 of the rules of procedure of the General Assembly be applied to the election of judges of the third Trial Chamber of the International Tribunal.

8. In accordance with article 13, subparagraph 2 (d), of the Statute of the International Tribunal, the Holy See and Switzerland, being non-member States which maintain permanent observer missions at United Nations Headquarters, will participate in the election in the same manner as the States Members of the United Nations.

9. On the date of the election, the General Assembly will elect three judges from the list of candidates submitted to it by the Security Council.

10. According to paragraph 1 of article 13 of the Statute of the International Tribunal, judges of the Tribunal shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. According to that same provision, due account shall be taken in the overall composition of the Chambers of the International Tribunal of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

11. In accordance with subparagraph 2 (d) of article 13 of the Statute of the International Tribunal, the candidates who receive an absolute majority of the votes of States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected.

12. The consistent practice of the United Nations has been to interpret the words "absolute majority" as meaning a majority of all electors, whether or not they vote or are allowed to vote. The electors in the General Assembly for current purposes are all 185 Member States, together with the two non-member States mentioned in paragraph 8 above. Accordingly, 94 votes constitute an absolute majority in the Assembly for the purpose of the present election.

13. Only those candidates whose names appear on the ballot papers are eligible for election. The electors will indicate the candidates for whom they wish to vote by placing crosses against their names on the ballot papers. Each elector may vote in the first ballot for no more than three candidates.

14. If, in the first ballot, the number of candidates obtaining an absolute majority is less than three, a second ballot will be held, and balloting will continue in the same meeting, if and as necessary, until three candidates have obtained an absolute majority. In any second or subsequent ballot, each elector may vote for no more than three candidates less the number of candidates who have already obtained absolute majorities.

15. Following the practice in the election of judges of the International Court of Justice, any second and subsequent balloting shall be unrestricted. Votes may accordingly be

cast in any second or subsequent ballot for any eligible candidate who has not yet obtained an absolute majority.

16. If, in the first ballot, more than the required number of candidates obtains an absolute majority of votes, a second ballot will be held on all candidates, and balloting will continue at the same meeting, if and as necessary, until the required number of candidates, and no more, obtains an absolute majority. In any such case, each elector may vote, both in the first ballot and in any subsequent ballot, for three candidates.

17. When three candidates obtain the required majority, the President of the General Assembly shall declare the candidates concerned elected.